

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Criminal No. 10-205(1) (DWF/AJB)

Plaintiff,

v.

Edward L. Andrist,

Defendant.

**ORDER AND MEMORANDUM
ADOPTING REPORT
AND RECOMMENDATION**

LeeAnn K. Bell, Assistant United States Attorney, United States Attorney's Office, counsel for Plaintiff.

Caroline Durham, Assistant Federal Defender, Office of the Federal Defender, counsel for Defendant.

This matter is before the Court upon Defendant Edward L. Andrist's ("Defendant") objections to Chief Magistrate Judge Arthur J. Boylan's Report and Recommendation dated August 19, 2010, insofar as it recommends that: (1) Defendant's Motion to Suppress Evidence Obtained as a Result of Search and Seizure be denied; and (2) Defendant's Motion to Suppress Statements, Admissions and Answers be denied.

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of counsel, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). The factual background for the above-entitled matter is clearly and

precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Defendant's objections.

Based upon the *de novo* review of the record and all of the arguments and submissions of the parties and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Defendant Edward L. Andrist's objections (Doc. No. [30]) to Chief Magistrate Judge Arthur J. Boylan's Report and Recommendation dated August 19, 2010, are **DENIED**.

2. Chief Magistrate Judge Arthur J. Boylan's Report and Recommendation dated August 19, 2010 (Doc. No. [28]) is **ADOPTED**.

3. Defendant Edward L. Andrist's Motion to Suppress Evidence Obtained as a Result of Search and Seizure (Doc. No. [15]) is **DENIED**.

4. Defendant Edward L. Andrist's Motion to Suppress Statements, Admissions and Answers (Doc. No. [16]) is **DENIED**.

Dated: October 26, 2010

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge

MEMORANDUM

Search Warrant

Based upon the Court’s *de novo* review of the search warrant and the underlying affidavit in the case, the Court finds and concludes, as the Magistrate Judge did, that the issuing judge had a “substantial basis” for finding the existence of probable cause.

Illinois v. Gates, 462 U.S. 213 (1983). In this case, the probable cause for the search warrant for the Defendant’s residence was based on a call to law enforcement from a computer store stating that they had found child pornography on a computer that the Defendant had dropped off to be fixed. Consequently, the follow-up search warrant simply authorized the actual search of the seized computers and other media storage items and was based on the same facts. The totality of the circumstances presented by the application for the search warrant clearly established probable cause for each search warrant.

Defendant’s Statement

Admittedly, custody occurs not only when there is a formal arrest but also when the totality of the circumstance establishes that the suspect is deprived of his or her freedom of movement in any significant way. *United States v. Griffith*, 922 F.2d 1343 (8th Cir. 1990). The totality of the circumstances on the record before the Court, when the six factors set forth in *Griffith* are applied to the situation that the Defendant found himself in, establishes, consistent with the conclusion of the Magistrate Judge, that the Defendant was not in custody.

For the reasons stated, the Court respectfully overrules the objections of the Defendant and adopts the Report and Recommendation of Chief Magistrate Judge Arthur J. Boylan.

D.W.F.